

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 9. HEALTH SERVICES

#### CHAPTER 8. DEPARTMENT OF HEALTH SERVICES FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

[R06-74]

#### PREAMBLE

- 1. Sections Affected**

R9-8-102	<b><u>Rulemaking Action</u></b>
R9-8-107	Amend
	Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 36-136(A)(7) and 36-136(F)  
Implementing statute: A.R.S. § 36-136(H)(4)
- 3. A list of all previous notices appearing in the *Register* addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 12 A.A.R. 227, January 27, 2006
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Don Herrington, Office Chief
Address:	Arizona Department of Health Services Office of Environmental Health Bureau of Epidemiology and Disease Control 150 N. 18th Ave., Suite 430 Phoenix, AZ 85007
Telephone:	(602) 364-3118
Fax:	(602) 364-3146
E-mail:	herrind@azdhs.gov
Or:	
Name:	Kathleen Phillips, Rules Administrator
Address:	Department of Health Services Office of Administrative Rules 1740 W. Adams St., Suite 202 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	phillik@azdhs.gov
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The purpose of this rulemaking is to implement Laws 2004, Ch. 51, effective August 25, 2004, which requires the Arizona Department of Health Services (Department) to prescribe reasonably necessary measures to assure that all

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food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects, or disease-causing organisms. The rules for the regulation and inspection of food and drink in Arizona are in A.A.C. Title 9, Chapter 8, Article 1. The Department had exempted milk and milk products from A.A.C. Title 9, Chapter 8, Article 1. The Department is amending R9-8-102 to remove the exemption for milk and milk products from the Article. In R9-8-107, the Department has incorporated the United States Food and Drug Administration publication, *Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration* (1999) (FC), as modified. The Department is amending R9-8-107 to include the sections of the FC that apply to milk and milk products sold at the retail level.

Although the Department does not currently require the inspection of milk and milk products sold at the retail level, county health departments and the Department have been conducting food establishment inspections where milk and milk products were sold. During fiscal year 2005, county health departments and the Department conducted 71,492 food safety inspections at 30,313 food establishments currently licensed to operate in Arizona.

**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department did not review or rely on any study during this rulemaking.

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00.

This rulemaking affects any person selling milk or milk products at the retail level in Arizona, county health departments inspecting food establishments, and the Department.

The estimated cost to any person selling milk or milk products at the retail level in Arizona is minimal because the rulemaking does not change the responsibilities of the person selling milk and milk products at the retail level in Arizona.

The county health departments are currently inspecting food establishments in Arizona and the cost to include inspections of milk and milk products during a food inspection is minimal.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Don Herrington, Office Chief

Address: Arizona Department of Health Services  
Office of Environmental Health  
Bureau of Epidemiology and Disease Control  
150 N. 18th Ave., Suite 430  
Phoenix, AZ 85007

Telephone: (602) 364-3118

Fax: (602) 364-3146

E-mail: herrind@azdhs.gov

Or:

Name: Kathleen Phillips, Rules Administrator

Address: Department of Health Services  
Office of Administrative Rules  
1740 W. Adams St., Suite 202  
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

Date: April 19, 2006  
Time: 10:00 a.m.  
Location: 1740 W. Adams St., Room 411  
Phoenix, AZ 85007

A person may submit written comments on the proposed rules no later than 5:00 p.m., April 19, 2006, to the individuals listed in items #4 and #9. Persons with disability may request reasonable accommodations by contacting Maria Herbert at herberm@azdhs.gov or (602) 364-0912. Requests should be made as early as possible to allow sufficient time to arrange for the accommodation.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable

**12. Incorporations by reference and their location in the rules:**

In R9-8-107, the Department has incorporated the United States Food and Drug Administration publication, *Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration* (1999) (FC), as modified. The Department is amending R9-8-107 to include the sections of the FC that apply to milk and milk products sold at the retail level.

**13. The full text of the rules follows:**

**TITLE 9. HEALTH SERVICES**

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES  
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

**ARTICLE 1. FOOD AND DRINK**

Section

R9-8-102. Applicability  
R9-8-107. Food Safety Requirements

**ARTICLE 1. FOOD AND DRINK**

**R9-8-102. Applicability**

This Article does not apply to the following:

1. No change
2. ~~Milk and milk products;~~
3. ~~2.~~ No change
4. ~~3.~~ No change
5. ~~4.~~ No change
6. ~~5.~~ No change
7. ~~6.~~ No change
8. ~~7.~~ No change
9. ~~8.~~ No change

**R9-8-107. Food Safety Requirements**

- A. A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, *Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration* (1999), as modified, which is incorporated by reference. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and ~~the Office of the Secretary of State~~; is available for purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available on the Internet at <http://www.fda.gov>.
- B. No change
  1. No change

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2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. Paragraph 3-202.14(B) is ~~deleted~~ modified to read: “All milk and milk products sold at the retail level in Arizona shall comply with the requirements in A.A.C. Title 3, Chapter 2, Article 8.”;
14. ~~Paragraph 3-202.14(C) is deleted;~~
15. ~~Paragraph 3-202.14(D) is deleted;~~
16. ~~14.~~No change
17. ~~15.~~No change
18. ~~16.~~No change
19. ~~17.~~No change
20. ~~18.~~No change
21. ~~19.~~No change
22. ~~20.~~No change
23. ~~21.~~No change
24. ~~22.~~No change
25. ~~23.~~No change
26. ~~24.~~No change
27. ~~25.~~No change
28. ~~26.~~No change
29. ~~Section 3-603.11 is modified by deleting “milk”;~~
30. ~~27.~~No change
31. ~~28.~~No change
32. ~~29.~~No change
33. ~~30.~~No change
34. ~~31.~~No change
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42. ~~39.~~No change
43. ~~40.~~No change
44. ~~41.~~No change
  - a. No change
  - b. No change
  - c. No change,
  - d. No change
  - e. No change
  - f. No change
  - g. ~~Section 3-201.13,~~
  - h. ~~g.~~No change
  - i. ~~h.~~No change
  - j. ~~i.~~No change
  - k. ~~j.~~No change
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~~v.~~ u. No change  
~~w.~~ v. No change  
~~x.~~ w. No change  
45- 42. No change